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Supreme Court, U.S.
FILED
MAR 5 1987
JOSEPH F. SPANIOL, JR.
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No. 86-1317

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1986

49ER CHEVROLET, INC.; RICHARD E. WILMSHURST; ROBERT BATEY; and MARTIN GOLDBERG, Trustee in Bankruptcy of ULYSSES, INC.,

Petitioners,

v.

GENERAL MOTORS CORPORATION; INSURED TRANSPORTERS, INC.; and PACIFIC MOTOR TRANSPORT COMPANY,

Respondents.

On Writ of Certiorari
To The United States Court of Appeals
For the Ninth Circuit

MEMORANDUM IN OPPOSITION

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Company

6 pp

Respondent Pacific Motor Transport Company ("PMT") has received the Petition for Certiorari in this matter. Upon reviewing the Petition, it appears that PMT is not directly affected by the matters raised in the Petition.

The opinion below set out the two issues which petitioners had raised in the court of appeals:

> "On appeal, the dealers . . . continue to challenge: (1) GM's system of payments to dealers for repairing vehicles damaged in transit, and (2) GM's system for compensating dealers for repairs performed under the manufacturer's warranty." Petition for Writ of Certiorari (hereinafter "Petition") at A-3.

As to the first issue, the dealers alleged that there was a horizontal price-fixing agreement between GM and the two other defendants, PMT and

Insured Transporters, Inc. ("Insured"), on the prices the dealers received from GM for making repairs to vehicles damaged in transit. In their Petition for Certiorari, petitioners do not challenge the Ninth Circuit's holding that there was insufficient evidence to support petitioners' allegations of a horizontal conspiracy between GM, PMT and Insured. It was on that basis that the Ninth Circuit affirmed the district court's grant of summary judgment. Petition at A-6. Thus, the issue of GM's system of payments for repairing vehicles damaged in transit -- the only issue concerning PMT -- is not before this Court.

PMT therefore submits this memorandum in lieu of a formal brief in opposition to the petition and joins in the position set forth in General Motors

Corporation's Brief in Opposition to the Petition.

Dated: March 5, 1987

Ann Fingarette Hasse

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Attorneys for Respondent
Pacific Motor Transport
Company

DECLARATION OF SERVICE
BY MAIL

I, Beverly Andrews, say and declare:

I am a citizen of the United States, over eighteen years of age, and not a party to the within action. My business address is One Sansome Street, Suite 3130, San Francisco, CA 94104.

That on March 3, 1987, I served a copy of the foregoing Memorandum in Opposition via United States First Class Mail on the following parties of record:

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and by then sealing said envelopes and depositing same into the United States Mail, postage fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 5, 1987, at San Francisco, California.

Beverly J. Andrews

Beverly J. Andrews